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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. [redacted] 4

CLAIRE A. WARNER, Administratrix of the Estate of John M. Warner, Deceased,
Petitioner (Appellant Below),

vs.

EDWARD F. GOLTRA, Doing Business Under the Style and Name of the Goltra Barge Line.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI AND BRIEF IN SUPPORT THEREOF.

Samuel W. Fordyce,
Henry J. Richardson,
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Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933.

No. 870

CLAIRE A. WARNER, ADMINISTRATRIX OF THE ESTATE OF JOHN M. WARNER, DECEASED,
Petitioner (Appellant Below),

vs.

EDWARD F. GOLTRA, DOING BUSINESS UNDER THE STYLE AND NAME OF THE GOLTRA BARGE LINE.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of Matter Involved.

The sole question involved in this proceeding may be stated as follows:

Whether the personal representatives of a deceased *master* of a vessel owned by a citizen of the United

States, who was killed as the result of the negligence of his employer, was granted a cause of action for damages for the death of such *master*, by section 33 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 688), which provides that the personal representative of a *seaman*, who is thus killed, may maintain an action at law for damages under the statutes of the United States conferring or regulating the right of action for death in the case of railway employes?

The Supreme Court of Missouri held that as the *master* of a vessel was not a *seaman*, no such cause of action was granted by said act.

This question originates in a suit filed in the Circuit Court of the City of St. Louis, Missouri. Said action was brought by your petitioner, Claire A. Warner, who is the widow, and administratrix of the estate of John M. Warner, for the purpose of recovering damages on behalf of her daughter and herself for the wrongful death of her said husband. The defendant was the respondent, Edward F. Goltra, who was then doing business under the name of the Goltra Barge Line, the main office of which was located in St. Louis, Missouri. In her second amended petition (R. 2) your petitioner alleged that at the time of his death Warner was employed by Goltra as captain or master of the towboat "Iowa," and was on board said vessel in the scope of his employment and course of his duties as such master, and was engaged in interstate commerce; that at said time the "Iowa" was being navigated and used by other agents and employees of Goltra to unground certain barges of freight, which it had previously been pushing down the Ohio River in interstate commerce, and which had become stuck upon a sandbar in said river; that in attempting to unground said barges the "Iowa" was so negligently and unskillfully managed by said other agents and

employees of Goltra that they caused it to collide violently with the grounded barges and the bank of said river; and that the shock or jar caused by said collision threw Captain Warner into the Ohio River where he was drowned.

In bringing said suit your petitioner believed that she was proceeding in accordance with rights and privileges granted to her by Section 33 of the Merchant Marine Act of June 5, 1920 (S. 688, C. 18, Title 46 U. S. C. A.; C. 250, S. 33, 41 Stat. 1007) which reads as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

Respondent filed a general demurrer to said petition (R. 7). In support thereof he contended that under Sec. 713, C. 18, Title 46 U. S. C. A. (Act of June 7, 1872, C. 322, S. 65, 17 Stat. 277; R. S. Sec. 4612; December 21, 1898, C. 28, S. 23, 30 Stat. 762; March 4, 1915, C. 153, S. 10, 38 Stat. 1168), Warner, because he was a master of a vessel, was not a seaman within the meaning of Section 33 of the Merchant Marine Act, and that consequently Section 33 of said act gave no rights to his personal representative to sue

for his wrongful death. Section 713 of the Code reads in part as follows:

> "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this chapter may be applicable, and the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong."

The Circuit Court agreed with this contention, and sustained the demurrer (R. 7).

Thereafter your petitioner refused to plead further, allowed judgment to be entered against her upon said demurrer, and duly appealed to the Supreme Court of Missouri (R. 1-2).

The latter court affirmed the judgment of the Circuit Court (R. 11). In the course of its opinion (R. 11) the court said that the word "seaman" in Section 33 of the Merchant Marine Act must be construed in the light of the definitions contained in Section 713 of the Code. In regard to such definitions, the court stated:

> "We, therefore, believe that Congress clearly intended to distinguish 'master' from 'seaman' and that the word 'seaman' does not include the word 'master' so as to give the master a cause of action under Section 688 of this chapter." (Section 33 of the Merchant Marine Act.) (R. 16.)

The effect of this decision, if not reversed, will be to deny to masters, because they are masters, the remedial rights

granted by said section of the Merchant Marine Act to all other maritime employes.

II.

Reason Relied on for the Allowance of the Writ.

The Supreme Court of Missouri held that a *master* of a vessel is not a *seaman* within the meaning of Section 33 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 688), and that consequently said section granted to the personal representative of a deceased master, who was killed as the result of the negligence of his employer, no cause of action for damages for the death of such master. This decision, in effect, also denies to masters, who are injured as the result of the negligence of their employers, a right to sue at law for damages for such injury. As this decision vitally affects the welfare of all masters of vessels, which are owned by citizens of the United States, it involves a Federal question of substance. Such question has not heretofore been decided by this Court.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Missouri, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court of Missouri had in the case numbered and entitled on its docket No. 29648, Claire A. Warner, Administratrix of the Estate of John M. Warner, deceased, Appellant, *vs.* Edward F. Goltra, doing business under the style and name of the Goltra Barge Line, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Missouri Supreme

Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated March 12, 1934.

CLAIRE A. WARNER,
Administratrix of the Estate of
John M. Warner, Deceased,
By SAMUEL W. FORDYCE,
HENRY J. RICHARDSON,
C. POWELL FORDYCE,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 870

CLAIRE A. WARNER, ADMINISTRATRIX OF THE ESTATE OF JOHN M. WARNER, DECEASED,

Petitioner (Appellant Below),

vs.

EDWARD F. GOLTRA, DOING BUSINESS UNDER THE STYLE AND NAME OF THE GOLTRA BARGE LINE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Supreme Court of Missouri (R. 11) has not yet been officially reported but may be found in 67 South Western (2d) Advance Sheets, page 47. The date of the opinion is December 20, 1933.

II.

Jurisdiction.

(1) The date of the judgment to be reviewed is December 20, 1933 (R. 11).

(2) The statutory provision which is believed to sustain the jurisdiction of this Court is Section 237, as amended, of the Judicial Code (28 U. S. C. A. Sec. 344 (b)).

(3) Your petitioner framed the second amended petition (R. 2), which she filed in the Circuit Court of the City of St. Louis, Missouri, for the purpose of bringing an action under the statutes of the United States conferring and regulating the right of action for death in the case of railway employees (see 45 U. S. C. A. 51, Act April 22, 1908, C. 149, S. 1, 35 Stat. 65). She believed that section 33 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 688) gave her the right or privilege of bringing this suit, for she believed that her deceased husband, who was the master of a vessel, was a seaman within the meaning of said section. The pertinent parts of said section 33 provide that in the case of the death of any seaman as the result of personal injuries suffered in the course of his employment, his personal representative may maintain an action for damages at law with the right of trial by jury, and in such cases all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Respondent, defendant in said court, filed a general demurrer to said petition (R. 7). In support thereof he orally argued that petitioner's husband, because he was a master, was not a seaman. Petitioner orally argued to the contrary. The Circuit Court agreed with respondent's position and sustained the demurrer (R. 7). Upon petitioner's refusal to plead further, judgment was

entered against her, and she duly appealed to the Supreme Court of Missouri (R. 1-2). In the brief filed by her in the Supreme Court of Missouri the only questions raised by petitioner were (1) whether her husband was a seaman within the meaning of section 33, and (2) whether said section granted to her the Federal right or privilege of bringing an action for damages for his wrongful death. Respondent's brief did no more than oppose petitioner's contentions. Under the rules and practice of the procedure prevailing in the courts of Missouri, petitioner properly set up and claimed this Federal right and privilege. In its opinion (R. 11) the Supreme Court of Missouri treated these Federal questions as sufficiently raised, necessarily involved, and still open; specifically dealt with them on their merits; and unequivocally denied that said section 33 granted to your petitioner such Federal right and privilege. Without deciding said questions the Missouri Supreme Court could not otherwise have reached the result it did reach. The Supreme Court of Missouri is the highest court in said state in which a decision could be had.

(4) The cases believed to sustain the jurisdiction of this Court are as follows: *Ireland* v. *Woods*, 246 U. S. 323; and *Fullerton-Krueger Lumber Co.* v. *Northern Pacific Ry. Co.*, 266 U. S. 435. See also *Jamison et al.* v. *Encarnacion*, 281 U. S. 635, in which this Court assumed jurisdiction upon certiorari to determine a similar question as to the scope of Section 33 of the Merchant Marine Act.

III.

Statement of the Case.

A full statement of the case has been given in the petition, and in the interest of brevity will not be repeated here.

IV.

Specification of Error.

The Supreme Court of Missouri erred in holding that a master of a vessel is not a seaman within the meaning of Section 33 of the Merchant Marine Act of June 5, 1920 (46 U. S. C. A. 688), and that, therefore, said section grants no cause of action for the wrongful death of such master to his personal representative.

V.

Summary of Argument.

To explain the nature of the Federal questions decided by the Supreme Court of Missouri it is necessary to discuss briefly the following points:

A. History and Purpose of Section 33 of the Merchant Marine Act.

The purpose of the LaFollette Seamen's Act of March 4, 1915, was to promote the welfare of American seamen. Section 20 thereof abolished the Fellow-Servant Rule. Subsequently this Court decided that said act did not impose upon ship owners the same measure of liability for injuries to seamen as the common law prescribed in the case of land employers. To remedy this situation Section 20 was amended by Section 33 of the Merchant Marine Act of June 5, 1920. The purpose of the later act was to do whatever might be necessary to develop and encourage the maintenance of an American Merchant Marine.

Section 33 for the first time gave seamen a cause of action for damages for death. It supplants all state statutory and maritime law on the subject. It applies to all maritime employees. It was passed to promote the safety of such

persons and to require compensation for their injury and death to be treated as part of the cost of the business.

B. Meaning of the Language used in Section 33 of the Merchant Marine Act.

This section gives to the personal representative of deceased "seamen" a cause of action for damages for their death. Petitioner—believing that her deceased husband, a master, was a "seaman"—brought suit thereunder. The Supreme Court of Missouri denied that a master was a seaman, and stated that therefore, Section 33 gave her no cause of action. Such a decision was erroneous.

Numerous dictionaries and cases state that a master is a seaman. Moreover, the authorities which define the word "seaman" gave it a meaning broad enough to include a master.

The Supreme Court of Missouri ignored these definitions, and based its decision upon Section 713, Title 46 U. S. C. A. It stated also that Section 713 must be read in connection with Section 33, and that Section 713 excludes a master from the definition of the word "seaman."

We contend that Section 713, as contained in the Code, does not apply to Section 33. Section 713, as there written, is inconsistent with Section 65, Act of June 7, 1872, from which it is derived and upon which it is based. We must look, therefore, only to Section 65, which has never been repealed, and which by its terms does not and cannot apply to Section 33 of the Merchant Marine Act of 1920.

But even if Section 713 of the Code must be used to construe the language used in Section 33, Section 713 defines the word "seaman" in a manner broad enough to include a master.

The decision of the Supreme Court of Missouri, by denying to masters and their administrators the causes of action

and remedial rights granted by Congress to all other maritime employees, adversely affects the health, safety and welfare of all masters of all vessels owned by citizens of the United States.

The questions involved in such a decision are Federal questions of substance and great importance. Such questions have never been decided by this Court.

VI.

ARGUMENT.

The Supreme Court of Missouri has decided a Federal question of substance not heretofore determined by this Court.

In order to explain the nature of the Federal question decided by the Supreme Court of Missouri, it is necessary for us to discuss briefly (A) the history and purpose of Section 33 of the Merchant Marine Act, and (B) the meaning of the words used in said section.

(A) *History and purpose of Section 33 of the Merchant Marine Act.*

On March 4, 1915, Congress passed the LaFollette Seamen's Act, the purpose of which was to "promote the welfare of American seamen" (*Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, 389). Section 20 of that act (C. 153, 38 Stat. 1164, 1185; Comp. Stat. 1916 ss. 8306, 8337a) providing:

> "In any suit to recover damages for any injury sustained on board vessel or in its service, seamen having command shall not be held to be fellow servants with those under their authority."

This act was construed in *Chelentis* v. *Luckenbach Steamship Co.*, 247 U. S. 372, 384, 385, in which this Court said:

> "The language of the section discloses no intention to impose upon ship owners the same measure of liability for injuries suffered by the crew while at sea as the common law prescribes for employers in respect of their employees on shore."

In 1919 various bills were introduced in Congress relative to the establishment of an American Merchant Marine. Those introduced in the Senate were referred to the Committee on Commerce, and hearings were had before it. At hearings during February, 1920, Mr. Andrew Furuseth, the President of the International Seamen's Union of North America, appeared before the Committee, convinced it that the United States could not successfully establish and maintain an adequate merchant marine without passing suitable laws to protect the men engaged in the operation thereof, called attention to the decision in the *Chelentis* case, *supra*, and, in order to give maritime employees the same rights as land employees, suggested the language of Section 33 of the Merchant Marine Act in substantially the same words as used in the final enactment thereof. (See U. S. Senate Hearings on Establishment of a Merchant Marine, pp. 1628, 1709 and 1712.) As a result of these hearings Section 33 was embodied in the Merchant Marine Act as an amendment of Section 20 of the La-Follette Act. (*Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, 389.) The purpose and policy of the Merchant Marine Act, as expressed therein, is to "do whatever may be necessary to develop and encourage the maintenance of * * * a merchant marine." (See 46 U. S. C. A. 861 note; c. 250, s. 1, 41 Stat. 988; and *Panama Railroad Co.* v. *Johnson, supra.*)

By passing Section 33 of the Merchant Marine Act Congress substantially changed the preexisting maritime law under which no damages could be recovered for the death of one engaged in maritime pursuits. (*Lindgren* v. *U. S.*, 281 U. S. 38, 43.) It is spoken of as "an act of general application" which "covers the entire field of liability for injuries to seamen" (*Lindgren* v. *U. S., supra*); which "broadened the maritime law by giving seamen a new right" (*Kuhlman* v. *W. & A. Fletcher Co.*, 20 Fed. (2d) 465, 467); the policy of which "is directed to the safety of the men (engaged in maritime service) and to treating compensation for injuries to them as properly part of the costs of the business" (*International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, 52).

(B) *Meaning of the Language Used in Section 33 of the Merchant Marine Act.*

Section 33 of this Act (46 U. S. C. A. 688) reads as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

Believing that her deceased husband, the master of the vessel "Iowa," was a seaman within the meaning of this act, petitioner brought suit thereunder to recover damages for his wrongful death.

The Supreme Court of Missouri, however, held that a master of a vessel was not a seaman, and that, therefore, this act gave petitioner no such cause of action. Such a decision is erroneous.

What is the meaning of the word "seaman", which is used in Section 33 of the Merchant Marine Act? Does it include a master, or does it include only those maritime employees of lower rank? As said act makes no reference to any other act of Congress, and as it does not itself attempt to define the word "seaman", we believe that resort must be had to cases and dictionaries in order to answer these questions.

Looking then only to such authorities, we find that they consider a master to be a seaman. Thus in the *Burns Bros., No. 31*, 29 Fed. (2d) 855, a suit in Admiralty for personal injuries, the court held that a master is a seaman within the meaning of 28 U. S. C. A. 837 (C. 27, s. 1, 40 Stat. 157, c. 113, s. 1, 40 Stat. 683) which gives to seamen the right to sue in Federal courts, to enforce laws made for their health and safety, without prepayment of costs. A similar holding was made in *In re Scott*, 250 Fed. 647, which involved the right of a master to become a naturalized citizen of the United States under Revised Statutes Sec. 2174 (Comp. Stat. 1916, s. 4357). By its terms said act applied only to seamen. In the course of the opinion the court said:

> " 'Seaman' is defined by Webster as:
>
> 'One whose occupation is to assist in the management of ships at sea; a mariner * * * applied both to officers and common sailors.'

"It is common knowledge that a man must be a seaman before he can be a master. It is manifest that the word 'seaman' might be used in different enactments in different senses, and the intended sense might appear from the context. If there is nothing in the context to show the sense in which the word is used, then it seems to us that it should be given the broadest meaning, so as to include a master, as well as a common seaman before the mast.

"Certainly an enabling act, such as this, should not receive such a narrow construction as to deprive one who comes within its terms of any rights given thereby, merely because he happens to be a high class man instead of a low class one. The fact that a man has made the most of his opportunities, and has risen to the head of his profession, should not bar him from receiving benefits conferred on his profession."

To the same effect is *The Balsa*, 10 Fed. (2) 408. Here a master libeled a vessel, charging her owners with negligence in failing to keep her in seaworthy condition and praying damages for his injury and the payment of his expense for cure and maintenance. The question involved was whether the rule which gives a seaman the right to recover his costs of cure and maintenance extented to the master. The court answered the question in the affirmative, stating:

"It would seem, *ratione rei*, there is no difference (except in degree) between the position of a master and that of a common seaman when it comes to an injury of one or the other as affecting the movement of the ship and her preservation to her owners; and no difference in the duty which in humanity (and self-interest) the owners owe one or the other. Though in different stations, each is a mariner, running the same risks, encountering the same dangers, engaged in the common adventure of sailing and safe-guarding the ship and her cargo. In this view, 'master, mates, sail-

> ors, surveyors, carpenters are mariners.' Benedict's Admiralty (4th Ed.) 189."

See also 56 C. J. p. 922, in which it is said: "Broadly speaking, the term 'seaman' includes a ship's officer, as well as her men."

In accord with these authorities are those dealing primarily with the definition of the word "seamen". They state that a seaman is any person employed or engaged to serve on board a vessel (see *United States* v. *Lindgren et al.*, 28 Fed. (2d) 725, 728); and any person employed in a vessel to assist in the main purpose of the voyage (see The Z. R. 3, 18 Fed. (2d) 122, 123). And in *The Buena Ventura*, 243 Fed. 797, 799, 800, it is said:

> "* * * every one is entitled to the privilege of a seaman who, like seamen at all contribute to and labor about the operation and welfare of the ship when she is upon a voyage.
>
> "* * * a man who serves the ship as the result of a contractual engagement of any kind, and serves her in navigation, is * * * entitled to the privilege of a seaman."

See also *The Sea Lark*, 14 Fed. (2d) 201; *Hoof* v. *Pacific-American Fisheries*, 284 Fed. 174, aff'd. 291 Fed. 306; and *Cassil* v. *U. S. E. F. Corp.*, 289 Fed. 774, 776.

Moreover, that a master is considered to be a seaman within Section 33 of the Merchant Marine Act is also indicated by certain decisions which consider that act in connection with the Longshoremen's and Harbor Worker's Compensation Act of March 4, 1927 (C. 509, 44 Stat. 1424, 33 U. S. C. A. ss. 901-950). That latter act provides for compensation when longshoremen or harbor workers are injured or killed upon navigable waters and specifically states that no compensation shall be payable in respect of the disability or death of a master or member of the crew of

any vessel (see 33 U. S. C. A. 903 (1), c. 509, s. 3, 44 Stat. 1426). The master and members of the crew were thus excepted because they were satisfied with the provisions of the Merchant Marine Act, and through their organized representative made known to Congress that they wished to remain outside of the latter act. (*Nogueira* v. *N. Y., N. H. & H. R. Co.*, 32 Fed (2d) 179, 181.) In speaking of the fact that they were so excepted, this court in *Nogueira* v. *N. Y. N. H. & H. R. Co.*, 281 U. S. 128, 134, 135, 136, said:

> "As to the *master* and *crew* of a vessel, it should be noted that Section 33 of the Merchant Marine Act (June 5), 1920 (Chap. 250, 41 Stat. at L. 988, 1007, U. S. C. Title 46, sec. 688) gave to *seamen* the rights and remedies under all statutes of the United States which were applicable to railway employees * * * thus carrying to seamen the benefit of the provisions of the Federal Employers' Liability Act.
>
> "It appears that the bill (Longshoremen's and Harborworker's Compensation Act) originally excluded a *master or member of a crew of a vessel,* but was amended so as to extend to them the benefit of compensation * * *. As *these seamen* preferred to remain outside of the provisions of the bill, they were finally excluded and the bill was passed with the exceptions above-quoted." (Matter in parenthesis supplied.)

If a master is not a seaman within the meaning of the Merchant Marine Act, then it is apparent that this Court was guilty of using very loose language in the *Nogueira* case, *supra.*

If we remember that Section 33 of the Merchant Marine Act is remedial legislation which must be liberally construed, and that the words used therein have a flexible meaning, (*International Stevedoring Co.* v. *Haverty, supra*), then it seems clear to us that the word "seaman" used in said section is broad enough to include a master of

a vessel. That word is a general one, which includes several classes of persons, and no authority justifies restricting it to one class, or in giving it the narrowest possible interpretation. The mischief to be redressed by the statute is equally applicable to all classes. (*In re Scott,* 250 Fed. 647, 648.)

The Supreme Court of Missouri, however, did not agree with these conclusions. It said that the word "seaman" in Section 33 of the Merchant Marine Act must be construed in the light of the definitions given in Section 713, Title 46 U. S. C. A. The pertinent parts of said section provide:

> "In the construction of this chapter every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a seaman * * *."

The Missouri Supreme Court also said:

> "We believe that the term 'master' is used as separately and distinctly from the term 'seaman' as if the act read: 'Every person having the command of any vessel * * * shall, be deemed to be the 'master,' and every other' person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'" (R. 15).

In our opinion the Missouri Supreme Court had no power or authority to use Section 713 of the Code (46 U. S. C. A. c. 18, s. 713) in determining the meaning of a word in Section 33 of the Merchant Marine Act (46 U. S. C. A. c. 18, s. 688). We make this statement in spite of the fact that where both sections were placed in Chapter 18, Title 46 of the Code, and in spite of the fact that Section 713 on its

face applies to all other provisions in said chapter. Our reason for so stating is that Section 713, as contained in the Code, does not represent any law enacted by Congress. According to the historical note contained under Section 713, Title 46 of the Code, said section is derived from, and based upon, Section 65 of the Act of June 7, 1872 (C. 322, s. 65, 17 Stat. 277). Section 65 reads in part as follows:

> "That to avoid doubt *in the construction of this act*, every person having the command of any ship belonging to any citizen of the United States shall, *within the meaning and for the purposes of this act*, be deemed and taken to be the 'master' of such ship; and that every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same, shall be deemed and taken to be a 'seaman' *within the meaning and for the purposes of this act* * * *"

This language is materially different from the language used in said Section 713 of the Code. Section 65, which has never been repealed, confines the definitions therein contained to the Act of June 7, 1872. To apply such definitions to the Merchant Marine Act of June 5, 1920, is to permit those who compiled the code, instead of Congress, to enact the laws of the United States. This can not be done.

Consequently, as Section 713 of the Code is not itself the enactment of a new law, does not repeal or amend any old law, and is inconsistent with Section 65 of the Act of June 7, 1872, we must give effect to Section 65 for all purposes.

> "The matter set forth in the Code * * * shall establish prima facie the laws of the United States, general and permanent in their nature in force on the 7th day of December, 1925; but nothing in this act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the

> Code. In case of any inconsistency arising through omission or otherwise between the provisions of any section of this Code, and the corresponding portion of legislation heretofore enacted, effect shall be given for all purposes whatsoever to such enactments." Section 2a Act of June 30, 1926, Titles 1-4 U. S. C. A. page 3; Chapter 712, 44 Stat. at L. Pt. 1, 1.)

For these reasons, we say that Section 713 can not be used to construe the world "seaman" in Section 33 of the Merchant Marine Act; that Section 65 of the Act of June 7, 1872 can not be used for such purpose; and that under these circumstances the meaning of such word must be determined from the definitions given in the cases and dictionaries heretofore set forth.

But even if we assume, for the sake of argument, that the definitions in Section 713 of the Code must be resorted to, we still do not believe that they conclusively establish that a master is not a seaman. The mere fact that the first clause of said section defines the word "master," does not impliedly exclude a master from the broad, all inclusive definition given to the word "seaman" in the second clause. To hold to the contrary, we must change the statutory definition given to the latter word to read:

> "* * * and every person (*masters* and apprentices excepted) who shall be employed or engaged to serve in any capacity * * * shall be deemed * * * to be a 'seaman.'"

Congress did not so define the word "seaman." It excepted only apprentices. To thus change the definition violates the rule that exceptions in a statute are to be strictly construed, and are not to be interpreted so as to destroy its remedial purpose (*Piedmont & N. Ry. Co.* v. *U. S.*, 30 Fed. (2d) 421, 431); violates the rule that all that is not clearly embraced in an exception remains within the scope of the

principal provision (Sutherland "Statutory Construction," s. 328; and *Hopkins et al.* v. *U. S.*, 235 Fed. 95, 98); and violates the rule that where a legislative body has made a specific exception and has made no other exception or limitation, a conclusive presumption arises that it intended to make none (*Wabash R. R. Co.* v. *U. S.*, 178 Fed. 5, 11).

Conclusion.

The decision of the Supreme Court of Missouri adversely affects the health, safety, and welfare of all masters of vessels owned by citizens of the United States. It denies to them benefits granted by Congress to all other maritime employees, whether they be officers below the rank of master, ordinary seamen, or merely persons engaged to serve on board the vessel in some minor capacity. We cannot believe that Congress intended to make such an artificial classification among seamen—intended to deny to those, who have risen to the head of their profession, the rights conferred upon their profession—intended to exclude from the remedial provisions of Section 33 of the Merchant Marine Act one who runs the same risks, and encounters the same dangers as a common seaman. Whether Congress did so intend, is a Federal question of substance which has never been decided by this Court.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

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